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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,356	04/22/2004	Neil Aubrey Tarr	PAT 993-2 US	6065

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HICKS & ASSOCIATES  
RAVEN'S COURT  
709 MAIN STREET, SUITE 300  
CANMORE, AB T1W-2B2  
CANADA

EXAMINER

FONSECA, JESSIE T

ART UNIT PAPER NUMBER

3637

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/17/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/829,356	TARR, NEIL AUBREY	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jessie Fonseca	3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 10-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 18-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 1-9 and 18-20 have been examined.

#### ***Election/Restrictions***

Applicant's election with traverse of Group I (claims 1-9) in the reply filed on 1/27/07 is acknowledged.

The article of Group I and combination of Group III will be joined.

Claims 10-17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. The applicant's traversal is on the grounds that Group II would no longer pose an additional search burden on examiner as the process requires the use of a stud as recited in independent claim 1. This is not found persuasive, as there would be burden to search the process steps, the process steps are not presented or afforded any patentable weight to the claims of the structure.

The requirement is still deemed proper and is therefore made FINAL.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5, 8, and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "receptacle" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim. Applicant should remain consistent.

With regards to claim 8: It's unclear as to which or if both flanges include an aperture.

With regards to claim 20: It's unclear if the stud referred to in line 2 of the claim is directed to the corner stud or the stud recited in claim 18.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 9, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Westra (US 6,434,902).

With regards to claim 1: Westra discloses a stud (16) compositing:

- A first surface (D) (fig. 8) capable of abutting against a concrete wall;
- An anchoring system (A) (fig. 8) capable of anchoring the first surface to a form tie protruding from the concrete wall; and
- A lateral web (42, 43) extending from the first surface (D) (fig. 8) capable of receiving and retaining insulation adjacent to the concrete wall.

With regards to claim 2: Westra further discloses the second surface (34)

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disposed on the lateral web (42, 43) opposite to the first surface (D) capable of supporting finishing treatment.

With regards to claim 3: Westra further discloses the lateral web (42, 43) extends between the first and second surface (D, 34) at right angles thereto (fig. 8)

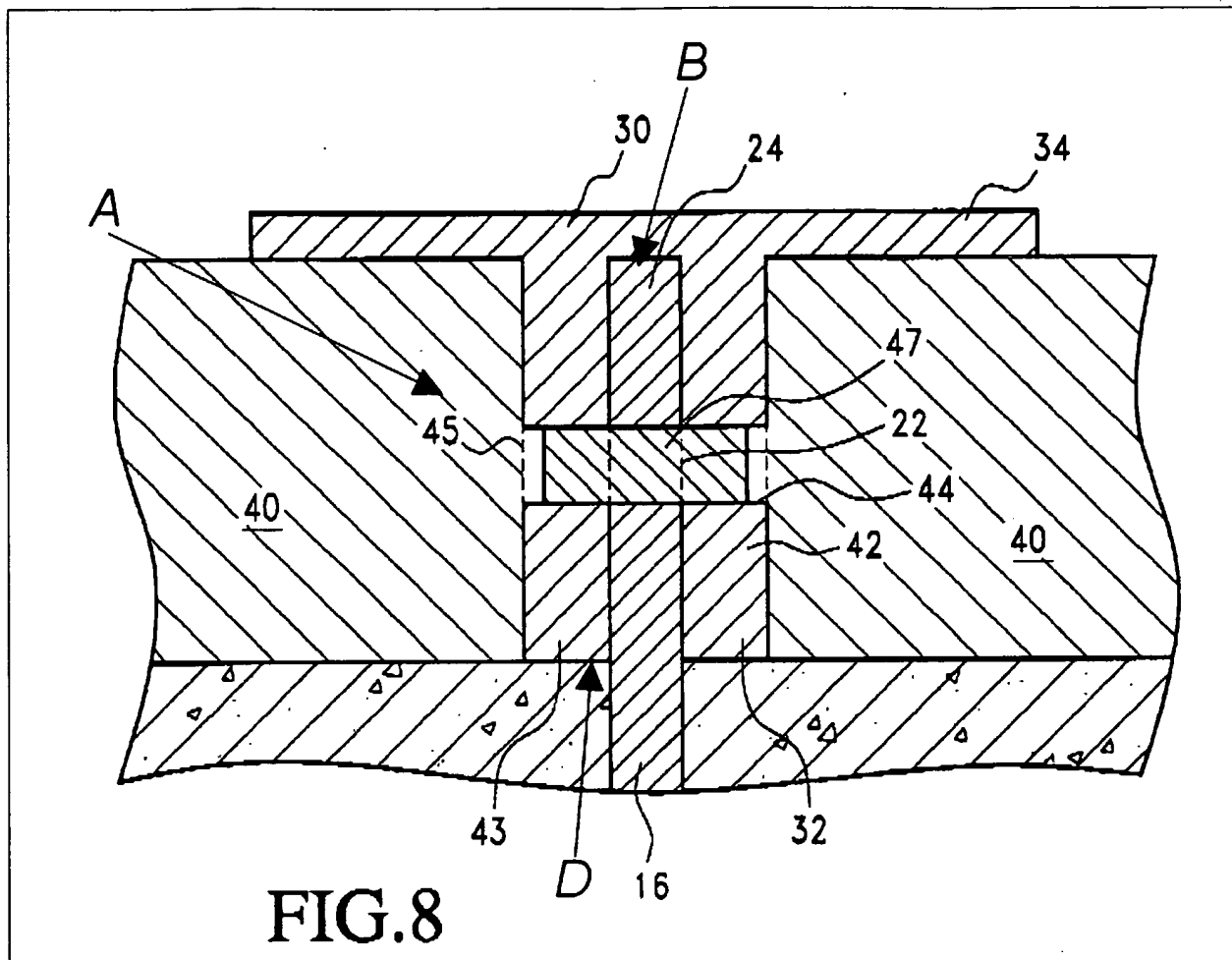
With regards to claim 4: Westra further discloses the anchoring system (A) includes a form tie receptacle (B) and an anchor (47) capable of engaging a hole in the form tie.

With regards to claim 6: Westra further discloses a form tie receptacle (B) includes an opening (44) capable of alignment with the hole in the form tie and wherein the anchor is placed through the opening and through the hole when aligned to anchor the stud to the form tie.

With regards to claim 9: Westra further discloses the stud (16) is molded plastic stud (col. 3, lines 21-27).

With regards to claim 18: Westra discloses a kit, the kit comprising a plurality of stud (30) (fig. 7) capable of attachment to form ties protruding from the concrete wall and a plurality of anchors for anchoring the studs to the form ties, the studs (30) including:

- A first surface (D) (fig. 8) capable of abutting against a concrete wall;
- An anchoring system (A) (fig. 8) capable of anchoring the first surface to a form tie (16) protruding from the concrete wall; and
- A lateral web (42, 43) extending from the first surface (D) (fig. 8) capable of receiving and retaining insulation adjacent to the concrete wall.



**Fig. 6: Westra (US 6,434,902)**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Alternatively, claims 1 and 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Westra (US 6,434,902).

With regards to claim 1: Westra discloses a stud (16) compositing:

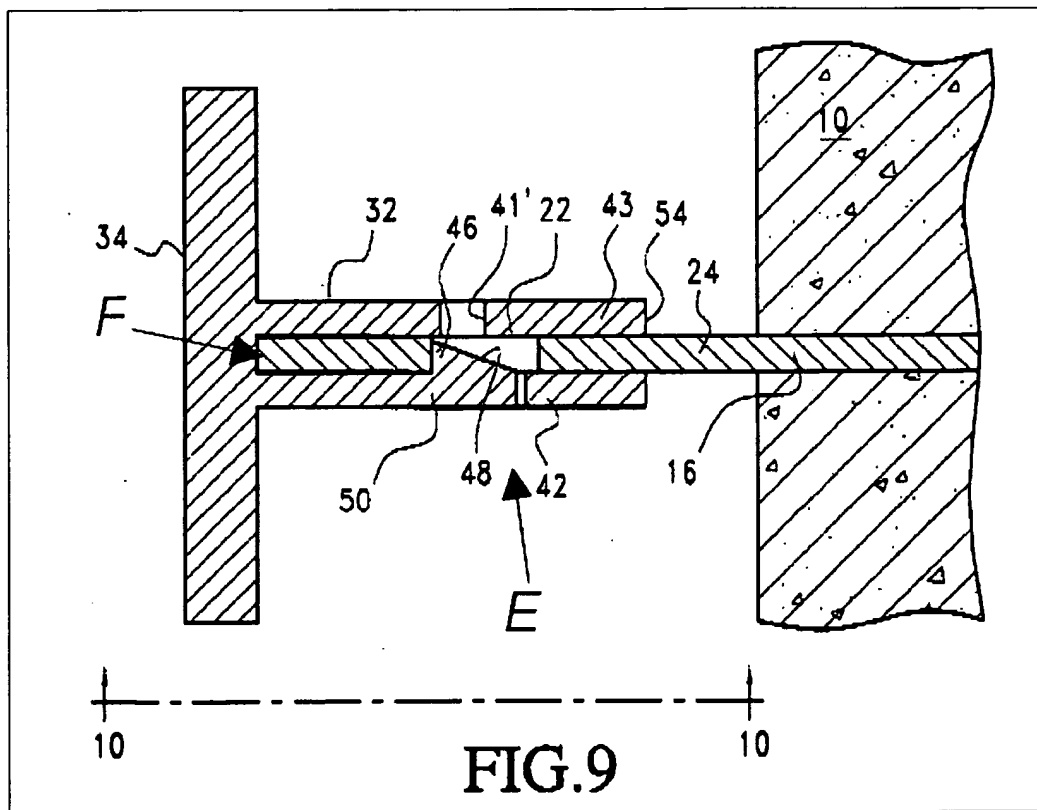
- An anchoring system (E) (fig. 9) capable of anchoring the first surface to a form tie protruding from the concrete wall; and
- A lateral web (42, 43) extending from the first surface (54) (fig. 9) capable of receiving and retaining insulation adjacent to the concrete wall.

Westra does explicitly disclose a first surface (54) capable of abutting against a concrete wall (fig. 9). However, Westra discloses that first surface (54) does not necessarily need to be in contact with the wall for positive securement, but it possible and known in the art (col. 4, lines 4-14). In addition, Westra discloses an embodiment (as shown in fig. 8) where the first surface (D) abuts the concrete wall (10). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the stud of Westra (as shown in fig. 9) to have the first surface abut

against a concrete wall as taught by Westra in order provide a stud with increased structural integrity and stability.

With regards to claim 4: Westra further discloses the anchoring system (A) includes a form tie receptacle (F) and an anchor (46) capable of engaging a hole in the form tie as per the modification above.

With regards to claim 5: Westra further discloses the anchor is a tab located with the receptacle (F) as per the modification above.



**Fig. 9: Westra (6,434,902)**

Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Westra (6,434,902) in view of Bowden (US 3,452,960).



With regards to claim 7: Westra fails to disclose the first surface comprises first and second flanges extending outwardly from the lateral web. However, Bowden disclose a stud where the first surface comprises first and second flanges (26) extending outwardly from the lateral web (22, 23) where the flanges (26) include apertures (30) through which a nail (28) can be driven (fig. 4). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the stud of Westra to include flanges extending outwardly from the lateral web as taught by Bowden in order to provide structural integrity and stability to the stud.

With regards to claim 8: Westra, in view of Bowden, discloses everything previously mentioned, including the flange (26 of Bowden) includes an aperture (30 of Bowden) through which the nail (28 of Bowden) may be driven to secure the flange (26) to a concrete wall (10 of Westra) as per the modification of claim 7.

Claims 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Westra (6,434,902) in view of Silverman (US 6,243,999).

With regards to claim 19: Westra fails to disclose an opening trim member capable of operative engagement with a concrete wall adjacent an opening, the trim member including an abutting surface for abutting an opening in a concrete wall, an extension member extending angularly from the abutting surface a second extension member for supporting attachment of a finishing surface. However, Silverman discloses an opening trim member (20) for operative engagement with a wall adjacent an opening, the trim member (20) including an abutting surface for abutting an opening in a

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wall, an extension member extending angularly from the abutting surface a second extension member (24) (figures 2-4). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to employ such a portal and portal trim as taught by Silverman within the building structure of Westra in order to provide a support for a finishing surface.

Claims 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Westra (6,434,902) in view of Koenig, Jr. (US 5,477,643).

With regards to claim 20: Westra fails to disclose a corner stud capable of attachment to a wall corner, the stud include a first and second wall contacting surface and first and second web surfaces extending outwardly from the first and second wall contacting surfaces, the first and second web surface interconnected by a hinge. However, Koenig, Jr. discloses a corner stud (10) for attachment to a wall corner (fig.4), the stud (10) including a first and second wall contacting surface (12) and first and second web surfaces (60) extending outwardly from the first and second wall contacting surfaces (12), the first and second web surface (60) interconnected by a flexible hinge (14) (col. 2, lines 57-60 and fig. 4). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the building structure of Westra to include corner stud for attachment to a wall corner, the stud include a first and second wall contacting surface and first and second web surfaces extending outwardly from the first and second wall contacting surfaces, the first and second web surface interconnected by a hinge as taught by Koenig, Jr. in order to

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provide support for a finishing surface along a corner that has an angle less than or greater than 90 degrees.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Rutherford discloses a drywall bead accessory (US 4,074,748).

Moore, Jr. discloses a window assembly (US 4,433,517).

Koenig, Jr. disclose drywall finishing and masking accessory (US 5,243,797).

Klusner disclose a fastening element for mounting insulation strips (US 5,265,998).

Funaki discloses a heat insulation support tool (US 5,415,510).

Getz discloses a wall anchor system (US 5,644,889).

Klusner disclose a device for attaching insulation materials (US 5,671,576).

Young disclose trim members used on buildings (US 6,125,605).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessie Fonseca whose telephone number is (571)272-7195. The examiner can normally be reached on M-F 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571)272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JF JF  
4/11/07

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